

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DANIEL ACHESON,

NO. C16-5588RSL

Plaintiff,

V.

NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR ATTORNEY'S FEES**

Defendant.

This matter comes before the Court on Plaintiff Daniel Acheson’s motion for attorney’s fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 (“EAJA”). See Dkt. 14. The Commissioner of the Social Security Administration (“Commissioner”) challenges plaintiff’s request for statutory attorney’s fees on the grounds that the Commissioner’s position in this matter was substantially justified and had a reasonable basis in fact and law, and the Commissioner challenges the amount of plaintiff’s requested fees on the grounds that the amount is unreasonable under the particular facts of this case. See Dkt. 16. The Court disagrees and GRANTS plaintiff’s motion for statutory fees.

ORDER GRANTING PLAINTIFF'S MOTION  
FOR ATTORNEY'S FEES - 1

## I. PROCEDURAL HISTORY

On February 2, 2017, this Court issued an order reversing and remanding the Commissioner's decision to deny benefits for further administrative proceedings. See Dkt. 12. The Court found that (1) the ALJ erred by failing to provide specific and legitimate reasons supported by substantial evidence to discount the opinions of state agency psychological consultant Patricia Kraft, Ph.D., and examining psychologist Amanda Ragonesi, Psy.D., and (2) the errors were harmful because the resulting residual functional capacity ("RFC") and step-five finding were not supported by substantial evidence. See id. at 7-10. The Court reversed the Commissioner's decision pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings due to the harmful error. See id. at 13-14.

## II. DISCUSSION

In any action brought by or against the United States, the EAJA requires that “a court shall award to a prevailing party other than the United States fees and other expenses . . . unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A). When determining the issue of substantial justification, the court reviews only the “issues that led to remand” in determining if an award of fees is appropriate. See Toebl v. Colvin, 749 F.3d 830, 834 (9th Cir. 2014).

Plaintiff was the prevailing party because the Court reversed and remanded the Commissioner's decision to deny benefits for further administrative proceedings. See Dkt. 12. The ALJ's failure to provide sufficient reasons to discount Dr. Kraft's and Dr. Ragonesi's opinions led to the remand. See id. at 7-10.

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1           A.     Substantial Justification

2           The Commissioner argues that her position that the ALJ provided sufficient reasons to  
3 discount Dr. Kraft's and Dr. Ragonesi's opinions was substantially justified. See Dkt. 16. The  
4 Commissioner has the burden of proving that her position was substantially justified. See  
5 Hardisty v. Astrue, 592 F.3d 1072, 1076 n.2 (9th Cir. 2010). In addition, a "substantially  
6 justified position must have a reasonable basis both in law and fact." Gutierrez v. Barnhart, 274  
7 F.3d 1255, 1258 (9th Cir. 2001) (citations omitted). The fact that the Commissioner did not  
8 prevail on the merits does not compel the conclusion that her position was not substantially  
9 justified. See Kali v. Bowen, 854 F.2d 329, 334 (9th Cir. 1988) (citing Oregon Envtl. Council  
10 v. Kunzman, 817 F.2d 484, 498 (9th Cir. 1987)). However, a determination by the Court that  
11 the administrative decision was not supported by substantial evidence is a "strong indication"  
12 that the Commissioner's position was not substantially justified. Thangaraja v. Gonzales, 428  
13 F.3d 870, 874 (9th Cir. 2005).

14           Here, the Commissioner simply reiterates her position from the original litigation,  
15 arguing that the ALJ's errors in evaluating the medical evidence were harmless because the  
16 ALJ's decision was generally "supported by substantial evidence." See Dkt. 16 at 3-4.  
17 However, this Court found that such an approach to harmful error analysis would "essentially  
18 relieve the ALJ of her role as arbiter" and lead to an "absurd result." See Dkt. 12 at 8. Having  
19 found that the ALJ's errors in evaluating the medical evidence left the RFC unsupported by  
20 substantial evidence, the Court now finds no reason that the Commissioner's position was  
21 otherwise substantially justified. The Court also concludes that there are no special  
22 circumstances that render an EAJA award in this matter unjust. Accordingly, the Court will  
23 award plaintiff attorney's fees under the EAJA.

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1           B.     Amount of Fees

2           According to the United States Supreme Court, “the fee applicant bears the burden of  
3 establishing entitlement to an award and documenting the appropriate hours expended.”

4           Hensley v. Eckerhart, 461 U.S. 424, 437 (1983). The Court has an independent duty to review  
5 the submitted itemized log of hours to determine the reasonableness of hours requested in each  
6 case. See id. at 433, 436-37.

7           Once the Court determines that a plaintiff is entitled to a reasonable fee, “the amount of  
8 the fee, of course, must be determined on the facts of each case.” Id. at 429, 433 n.7. “[T]he  
9 most useful starting point for determining the amount of a reasonable fee is the number of  
10 hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” Id. at 433.

11           Here, plaintiff prevailed on the single claim of whether or not the denial of his social  
12 security application was not based on harmful legal error. When the case involves a “common  
13 core of facts or will be based on related legal theories . . . the district court should focus on the  
14 significance of the overall relief obtained by the plaintiff in relation to the hours reasonably  
15 expended on the litigation.” See id. at 435. The Supreme Court concluded that where a plaintiff  
16 “has obtained excellent results, his attorney should recover a fully compensatory fee.” Id.

17           The Court concludes based on a review of the relevant evidence that plaintiff obtained  
18 excellent results. The Court then looks to “the hours reasonably expended on the litigation,”  
19 which, when combined with the reasonable hourly rate, encompass the lodestar. See id.  
20 Plaintiff requests attorney’s fees in the amount of \$3,949.94, representing 20.5 hours of work.  
21 See Dkt. 14-1. The Commissioner argues that the amount requested is unreasonable because  
22 plaintiff enjoyed limited success, analogizing the case to Blair v. Colvin, 619 Fed.Appx. 583  
23 (9th Cir. 2015). See Dkt. 16 at 5. However, where the district court in Blair limited the scope  
24 of remand to reassessing consultants’ positions regarding one workplace limitation (see Blair,

1 619 Fed.Appx. at 585), the Court's order here was not so limited. See Dkt. 12. The Court  
2 found that the ALJ's errors in discounting two physicians' opinions without giving legally  
3 sufficient reasons affected the RFC and step-five finding, such that further administrative  
4 proceedings, including the opportunity for a new hearing, were necessary. See id. That plaintiff  
5 unsuccessfully argued that the ALJ committed other errors does not take away from plaintiff's  
6 excellent result.

7 Therefore, the Court finds reasonable plaintiff's original request for attorney's fees in  
8 the amount of \$3,949.94. The Court also finds reasonable plaintiff's request for \$154.14 for 0.8  
9 hours of additional work replying to the Commissioner's objection to his request for fees. See  
10 Comm'r, I.N.S. v. Jean, 496 U.S. 154 (1990).

11 III. CONCLUSION

12 Plaintiff is awarded \$4,104.08 in attorney's fees pursuant to the EAJA and consistent  
13 with Astrue v. Ratliff, 130 S. Ct. 2521, 2524 (2010). Plaintiff's award is subject to any offset  
14 allowed pursuant to the Department of Treasury's Offset Program. See id. at 2528. The check  
15 for EAJA fees shall be mailed to plaintiff's counsel: Kevin Kerr; Schneider, Kerr, &  
16 Robichaux; P.O. Box 14490; Portland, OR 97293.

17 Dated this 5th day of June, 2017.

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19 ROBERT S. LASNIK  
20 United States District Judge  
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